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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,580	02/20/2004	Michael Joseph Johnson	RPS920030057US1	7733
25799	7590	10/01/2009		
IBM CORPORATION PO BOX 12195 DEPT YXSA, BLDG 002 RESEARCH TRIANGLE PARK, NC 27709				
EXAMINER				
LASTRA, DANIEL				
ART UNIT		PAPER NUMBER		
3688				
NOTIFICATION DATE		DELIVERY MODE		
10/01/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RPSIPLAW@US.IBM.COM

Office Action Summary

Application No.

10/783,580

Applicant(s)

JOHNSON, MICHAEL JOSEPH

Examiner

DANIEL LASTRA

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28, 35-42 and 48-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28, 35-42 and 48-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-28, 35-42 and 48-55 have been examined. Application 10/783,580 (METHOD AND SYSTEM FOR MEASURING EFFECTIVENESS OF SHOPPING CART ADVERTISEMENTS BASED ON PURCHASES OF ADVERTISED ITEMS) has a filing date 02/20/2004.

Response to Amendment

2. In response to Final Rejection filed 04/08/2009, the Applicant filed an RCE on 07/15/2009, which amended claims 3, 25, 35, 48 and cancel claims 30-34, 44-47.

Claim Objections

3. Claim 2 is objected to because of the following informalities: It recites "stricture". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-8, 10-15, 17-24, 26-28, 35-40, 42, 48-53 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Malec (US 5,295,064).

Claim 1, Malec teaches:

A method for measuring effectiveness of advertisements displayed on a shopping cart, wherein said method comprises:

a) displaying at least one advertisement on a display device attached to said shopping cart to a plurality of shoppers sequentially using said shopping cart (see col 6, lines 45-67);

b) generating advertisement history data representing each of said at least one advertisement displayed to each shopper within said plurality of shoppers (see col 6, lines 45-67);

c) generating a code representing the at least one item purchased by each shopper within said plurality of shoppers (see col 6, lines 45-67);

d) comparing each said code representing at least one item with said advertisement history data to determine whether an item advertised in said at least one advertisement is purchased by each shopper within said plurality of shoppers (see col 6, lines 45-67);

and e) generating usage data representing each display of an advertisement for an item purchased by each shopper within said plurality of shoppers (see col 6, lines 45-67) .

Claim 2, Malec teaches:

Wherein step a) includes displaying images generated from an electrical signal on a display screen (see col 9, lines 1-30), and

step b) includes storing a code representing each of said at least one advertisement in an advertisement history data structure (see col 9, lines 1-30).

Claim 4, Malec teaches:

Wherein step c) includes reading a machine readable element identifying said at least one item with a sensing device at a point-of-sale terminal, and said method additionally comprises transmitting said advertisement history data to said point-of sale terminal from said shopping cart adjacent said point-of-sale terminal (see col 9, lines 20-30).

Claim 5, Malec teaches:

Wherein said method additionally comprises transmitting said code representing said at least one item and said advertisement history data to a store computer system from said point of sale terminal (see col 9, lines 20-30), and

steps d) and e) are performed according to instructions executing within said store computer system (see col 9, lines 20-30).

Claim 6, Malec teaches:

Wherein step a) occurs during a period of use of said shopping cart by said shopper, a beginning of said period of use is determined by sensing movement of said shopping cart (see col 24, lines 20-40), and

an end of said period of use is determined by transmitting said advertisement history data to said point-of-sale terminal (see col 24, lines 30-40).

Claim 7, Malec teaches:

Wherein step a) occurs during a period of use of said shopping cart by said shopper, a beginning of said period of use is determined by sensing manual operation of a switch (see col 24, lines 20-40), and

an end of said period of use is determined by transmitting said advertisement history data to said point-of-sale terminal (see col 24, lines 20-40).

Claim 8, Malec teaches:

Wherein step c) includes reading a machine readable element identifying said at least one item with a sensing device attached to said shopping cart (see col 22, lines 40-50), said method additionally comprises transmitting said code representing said at least one item and said advertisement history data to a store computer system from said shopping cart (see col 24, lines 20-40), and

steps d) and e) are performed according to instructions executing within said store computer system (see col 24, lines 20-40).

Claim 10, Malec teaches:

Wherein step d) includes comparing a code representing at least one item with a data record representing at least one advertisement, and said data record includes at least one code representing an item advertised in said advertisement represented by said data record (see col 6, lines 45-65)

Claim 11, Malec teaches:

Wherein said data record is generated within said shopping cart and transmitted to a store computer system (see col 9, lines 20-30); and

steps d) and e) are performed according to instructions executing within said store computer system (see col 9, lines 20-30).

Claim 12, Malec teaches:

Wherein said advertisement history data is generated within said shopping cart (see col 6, lines 45-67) and

transmitted to a store computer system, said data record is generated within said store computer system by comparing said advertisement history data with an advertisement data structure including codes representing items advertised by a plurality of advertisements (see col 24, lines 30-40).

Claim 13, Malec teaches:

wherein step d) includes determining a name associated with a code representing an item from an item data structure relating codes representing items with names associated with said items (see figure 9A); and

comparing said name associated with said code with a data record representing an advertisement displayed on said shopping cart, wherein said data record includes a name advertised in said advertisement represented by said data record (see figure 9A; col 4, lines 40-65).

Claim 14, Malec teaches:

Wherein said data record is generated within said shopping cart and transmitted to a store computer system (see col 24, lines 30-40); and

steps d) and e) are performed according to instructions executing within said store computer system (see col 24, lines 30-40).

Claim 15, Malec teaches:

Wherein said advertisement history data is generated within said shopping cart and transmitted to a store computer system, said data record is generated within said store computer system, and steps d) and e) are performed according to instructions executing within said store computer system (see col 6, lines 45-67).

Claim 17, Malec teaches:

Wherein step a) is controlled by executing instructions in a store computer system according to data transmitted from said store computing system to said shopping cart, and said advertisement history data is generated and stored within said store computer system (see col 6, lines 45-67).

Claim 18, Malec teaches:

Wherein step c) includes reading a machine readable element identifying said at least one item with a sensing device at a point-of-sale terminal, said method additionally comprises transmitting said code representing at least one item purchased by a shopper using said shopping cart from said point-of-sale terminal to said store computer system, and steps d) and e) are performed according to instructions executing within said store computer system (see col 22, lines 35-45).

Claim 19, Malec teaches:

Wherein step c) includes reading a machine readable element identifying said at least one item with a sensing device attached to said shopping cart, said method additionally comprises transmitting said code representing said at least one item to said store computer system from said shopping cart, and

steps d) and e) are performed according to instructions executing within said store computer system (see col 22, lines 35-45).

Claim 20, Malec teaches:

A system for displaying advertisements and for determining effectiveness of said advertisements, wherein said system comprises:

at least one shopping cart including a display unit displaying advertisements to a plurality of shoppers sequentially using said shopping cart, means for generating and storing advertisement history data representing advertisements displayed within said display unit to each shopper within said plurality of shoppers, and a transmitter for transmitting said advertising history data (see col 6, lines 45-65);

at least one sensing device for generating item codes representing items having machine readable elements identifying said items as said items are purchased (see col 22, lines 40-50); and

a store computer system including an item data structure storing codes representing a plurality of items, an advertisement data structure storing data representing advertisements, communication means for receiving said item codes and said advertisement history data (see col 6, lines 45-67), and a processor programmed to compare said item codes with said advertisement history data to determine whether an item advertised in an advertisement displayed in said at least one shopping cart to each shopper in said plurality of shoppers has been purchased by said shopper, and to generate usage data representing each display of an advertisement for

an item purchased by a shopper within said plurality of shoppers (see col 6, lines 45-65).

Claim 21, Malec teaches:

additionally comprising at least one point-of-sale terminal and a communication channel extending between each said at least one point-of-sale terminal and said store computer system, wherein each said sensing device is located at a point-of-sale terminal, said transmitter transmits said advertisement history data to said point-of-sale terminal (see col 22, lines 40-50), and

each said at least one point-of-sale terminal transmits said advertisement history data and said item codes to said store computer system over said communication channel (see col 22, lines 40-50).

Claim 22, Malec teaches:

Wherein each of said transmitters is a portion of a transceiver, each of said at least one point-of-sale terminals transmits a beacon signal, and said transmitter transmits said advertisement history data to said point-of-sale terminal upon receiving said beacon signal at said transceiver (see col 6, lines 45-67).

Claim 23, Malec teaches:

Wherein each said sensing device is located in one of said at least one shopping cart, and said transmitter transmits said advertisement data history and said item codes to said store computer system (see col 22, lines 40-60).

Claim 24, Malec teaches:

Wherein said display unit includes a display screen displaying images generated from an electronic signal (figure 9A), and

said shopping cart includes storage including an advertisement history data structure holding said advertising history data (see col 6, lines 45-67).

Claim 26, Malec teaches:

A system for displaying advertisements and for determining effectiveness of said advertisements, wherein said system comprises: at least one shopping cart including a display unit displaying advertisements to a plurality of users sequentially using said shopping cart, and a receiver for receiving data causing said advertisements to be displayed to each shopper within said plurality of shoppers (see col 6, lines 45-67);

at least one sensing device for generating item codes representing items having machine readable elements identifying said items (see col 22, lines 30-40); and a store computer system including an item data structure storing codes representing a plurality of items, an advertisement data structure storing data representing advertisements, communication means for receiving said item codes and for transmitting said data causing said advertisements to be displayed in said display unit of each of said at least one shopping cart, a transaction data structure storing advertisement history data representing advertisements displayed within said display unit of each of said at least one shopping cart, and a processor programmed to generate said data causing said advertisements to

be displayed in said display unit of each of said at least one shopping cart, to compare said item codes with said advertisement history data to determine whether an item advertised in an advertisement displayed-in said at least one shopping cart to each shopper with said plurality of shoppers has been purchased by a shopper in said plurality of shoppers, and to generate usage data representing each display of an advertisement for an item purchased by said shopper using said shopping cart (see col 6, lines 45-67).

Claim 27, Malec teaches:

additionally comprising at least one point-of-sale terminal and a communication channel extending between each said at least one point-of-sale terminal and said store computer system, wherein each said sensing device is located at a point-of-sale terminal transmitting said item codes to said store computer system (see col 22, lines 40-60).

claim 28, Malec teaches:

wherein each said sensing device is located in one of said at least one shopping cart, and each said shopping cart transmits said item codes to said store computer system (see col 22, lines 40-60).

Claims 35 and 48, Malec teaches:

A method performed within a computer system for determining how often advertisements are displayed in shopping carts used to purchase items advertised in said advertisements, wherein said advertisements are displayed in a

plurality of time periods, each associated with a use of a shopping cart by an individual shopper, and wherein said method comprises:

a) receiving a code describing an item being purchased during a time period in said plurality of time periods (see col 24, lines 20-40);

b) determining *in response to receiving said code in step a)* that said item described by said code is advertised within an advertisement described by advertisement history data describing at least one advertisement displayed in a shopping cart during the time period (see col 24, lines 20-40); and

c) generating usage data indicating a display of said advertisement described by said advertising history data in a shopping cart used to purchase an item in a time period within said plurality of time periods, when said item has been advertised within said advertisement in said shopping cart within said time period (see col 24, lines 20-40).

Claims 36 and 49, Malec teaches:

Wherein said method additionally comprises receiving said advertisement history data in a first transmission from a point-of-sale terminal, and said code is received in a transmission from said point-of-sale terminal following said first transmission (see col 24, lines 20-40).

Claims 37 and 50, Malec teaches:

wherein said code and said advertising history data are received together in a transmission from a shopping cart (see col 24, lines 20-40).

Claims 38 and 51, Malec teaches:

wherein step c) includes comparing said code with at least one code for an advertised item contained within said advertisement history data received in step b) (see col 6, lines 45-67).

claims 39 and 52, Malec teaches:

wherein step c) includes:

reading an advertisement data record from an advertisement data structure stored within said computer system for an advertisement described in said advertisement history data received in step b); and comparing said code with one or more codes for advertised items contained within said advertisement data record (see col 6, lines 45-67).

Claims 40 and 53, Malec teaches:

wherein step c) includes:

reading an advertisement data record from an advertisement data structure stored within said computer system for an advertisement described in said advertisement history data received in step b); reading an item data record from an item data structure stored within said computer system for an item identified by said code received in step a); and comparing an advertised name read from said advertisement data record with a name associated with said item read from said item data record (see col 6, lines 45-67).

Claims 42 and 55, Malec teaches:

additionally comprising transmitting a code causing an advertisement to be displayed on said shopping cart, and generating said advertising history data (See col 6, lines 45-67).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malec (US 5,295,064) in view of Overhultz (US 2004/0056091).

Claim 3, Malec teaches:

A method for measuring effectiveness of advertisements displayed on a shopping cart, wherein said method comprises:

a) displaying at least one advertisement on said shopping cart by holding at least one advertising placard within a display unit (see col 1, lines 39-45),

b) generating advertisement history data representing each said at least one advertisement within a step (see col 1, lines 39-45)

c) generating a code representing at least one item purchased by a shopper using said shopping cart (see col 6, lines 45-67);

d) comparing each said code representing at least one item with said advertisement history data to determine whether an item advertised in said at least one advertisement is purchased by said shopper using said shopping cart (see col 6, lines 45-67); and
e) generating usage data representing each display of an advertisement for an item purchased by said shopper using said shopping cart (see col 6, lines 45-67).

Malec does not expressly teach including generating an electrical signal in accordance with settings of electrical contacts operated according to a pattern of a surface of said at least one advertising placard held within said display unit. However, Overhultz teaches contact tags (see figure 3) placed in advertising signs, where said tags are used to generate advertisement history data, monitor customer exposure to marketing material and analyze tag data relating to the display of and exposure to advertising signs (see paragraph 19). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Malec would modify his invention to use contact tags placed in advertising signs such as placards, as taught by Overhultz in order to monitor customer exposure to marketing material and analyze tag data relating to the display of and exposure to advertising signs cart usage, as Malec teaches a system that determines the effectiveness of advertisements displayed to users being said advertisements dynamic or static (i.e. placard).

Claim 25, Malec does not teach:

Wherein said display unit comprises at least one slot for holding a placard having printed advertisement data and a plurality of switches activated by an element of

surface structures on said placard, and said advertisement history data is generated from outputs of said plurality of switches. However, the same argument made in claim 3 regarding this missing limitation is also made in claim 25.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malec (US 5,295,064).

Claim 9, Malec teaches:

Wherein said shopping cart additionally includes a printer (see figure 10, item 1327),

step a) occurs during a period of use of said shopping cart by said shopper with said sensing device, said period of use begins with reading said machine readable element of a first item (see col 22, lines 40-55);

said period of use ends with checking out (see col 9, lines 1-15; col 24, lines 50-56 "award a customer shopper points for purchasing a product"). Malec does not expressly mention printing a receipt within said shopping cart receipt printer. However, Official Notice is taken that it is old and well known in the promotion art to print a receipt at a check out terminal. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Malec shopping cart would print a receipt when a customer is checking out from a store, as Malec shopping cart already has a printer (see figure 10, item 1327), communicates bidirectional with in store computer in order to transmit scanned products (see col 22, lines 40-55) and it is old and well known in the promotion art to provide a receipt to a customer when said

customer is checking out in order to give said customer an evidence of what products were purchased and therefore, allowing said customer to check if everything is correct.

7. Claims 16, 41 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malec (US 5,295,064) in view of Patel (US 2004/0103024).

Claims 16, 41 and 54, Malec does not teach:

additionally comprising determining a plurality of amounts of money owed by a plurality of advertisers by applying an algorithm to said usage data. However, Patel teaches that it is old and well known in the promotion art to bill advertisers based upon the effectiveness of advertisements (see paragraph 27-28). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Malec's billing computer would use the reports produce on which ads were shown and what many consumers purchased the advertised product (see col 6, lines 45-65) in order to bill advertisers, as Patel teaches that it is old and well known in the promotion art to bill advertisers based upon advertisements' effectiveness.

Response to Arguments

8. Applicant's arguments filed 07/15/2009 have been fully considered but they are not persuasive. The Applicant argues that Malec does not teach the performance of data of each single advertised product bought by a customer. The Examiner answers that Malec teaches using customer identification (i.e. social security) to track customer purchase and award rewards to said customer if said customer purchases certain manufacturers products (see col 24, lines 40-55). Therefore, contrary to Applicant's argument, Malec teaches Applicant's claimed invention.

The Applicant argues that Malec does not teach using a name for comparison with a data record representing an advertisement. The Examiner answers that Malec teaches using unique ad identifier (i.e. name) for comparison purpose with a data record representing an advertisement (see col 4, lines 55-65). Therefore, contrary to Applicant's argument, Malec teaches Applicant's claimed invention.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A WEINHARDT can be reached on (571)272-6633. The official Fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).